



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

January 25, 2009

U.S. Army Corps of Engineers
Mobile District
P.O. Box 2288
Mobile, AL 36628-0001

Attention: Ms. Linda Brown

SUBJ: EPA Comments on the Final Environmental Impact Statement (FEIS) for Foley Land Cut Portion of the Gulf Intracoastal Waterway, Gulf Shores and Orange Beach, AL. CEQ #: 20090447 ERP#: COE-E39076-AL.

Dear Ms. Brown:

Pursuant to Section 309 of the Clean Air and Section 102(2)(C) of the National Environmental Policy Act (NEPA), EPA, Region 4 has reviewed the subject document. EPA is a cooperating agency on the project and previously reviewed the draft EIS. We subsequently met with the US Army Corps of Engineers (USACE) Mobile District and Tetra Tech, Inc to discuss our agency comments in more detail. We also provided Tetra Tech, Inc with preliminary FEIS comments in response to additional information provided to us.

The FEIS for the proposed project evaluates the environmental and socioeconomic consequences of the USACE's proposal to grant permits to construct 15 mixed-use developments consisting of 17 marinas, over 16,700 condominium units, 1,722 wet boat slips, 1,742 dry boat storage spaces and various commercial and support facilities along the Foley Land Cut (FLC) portion of the Gulf Intracoastal Waterway (GIWW) in south Baldwin County, Alabama. The FLC is a 10-mile long federally authorized and maintained commercial shipping channel that extends from Wolf Bay to Oyster Bay. It currently is an authorized channel of -12-foot mean lower low water (MLLW) and 125-foot-wide.

Construction of the proposed project's preferred alternative impacts approximately 711 acres and requires the excavation of approximately 3,143,195 cubic yards of material from upland, wetland and water bottoms. EPA's draft EIS concerns related to the adequacy of the alternatives analyses, data gaps (e.g. linear foot or area being dredged), and the need for additional information related to minimization and compensatory mitigation. In addition, the assumptions and baselines used for water quality and hydrological impacts assessment appeared as though they could have been underestimated. Consequently, EPA was concerned that the proposed project could result in adverse affects to water quality within several of the marinas and potentially the FLC. In addition, EPA recommended that specific best management practices designed to minimize water quality impacts should be incorporated into each permit application as a special condition of the permit. Most of our concerns were addressed prior to the issuance of

the FEIS. However, listed below are EPA's remaining concerns that should be addressed in the Record of Decision (ROD).

The description of the market demand is fairly limited, so the need for additional marinas does not appear to have been well established. Additional data should be provided by the applicants documenting usage rates of existing marinas and similar berthing facilities in the nearby area in the ROD or the subsequent permit application. This information could help to strengthen the need for the project given the recent economic downturn and/or perceived impact on future development.

EPA previously expressed concerns related to the proposed dredging depths and the potential for impacting dissolved oxygen levels. According to the FEIS, dredging of marinas is to occur at a depth equal to the FLC. As a result, there may not be a sufficient head difference to ensure adequate flushing of the basins. This could result in low dissolved oxygen, posing potential water quality problems. The dredging depths have been revised from -16 feet MLW to -12 feet MLW (for nearly all projects – however, confirmation of target depth in the ROD is needed for Bayside Harbor). While this is an improvement over the original designs (some of which were much deeper), some uncertainty still remains.

The USACE indicated that the target depth for the FLC is -12 MLW, with overdredge to -14 MLW. This information should be incorporated into the ROD as a project commitment, but even with equivalent target dredge depths, adequate flushing may still be an issue. EPA notes that the USACE Mobile has now included an evaluation period to investigate the option of phasing in additional boat slips after the initial build out. In addition, an annual evaluation period will occur that examines the impacts of increased recreational boat traffic on commercial navigation and waterway safety. Monitoring reports will be required that provide additional baseline data, impacts on safety and commercial navigation. Water quality monitoring targeting DO levels should be part of this process. EPA recommends that these commitments be incorporated into the ROD and/or subsequent permit conditions.

EPA is still unclear whether any overdredge is planned in creating and maintaining the marinas? On page 2-39, the FEIS (Section 2.2) includes the general requirement (#6) that "All marina entrance channels must be a minimum of -12 feet MLW from the toe of the waterway channel to the government right-of-way limit." Any deviations beyond the target for the marinas could lead to further violations of the DO Water Quality Standard, so target dredge depths may still need to be reconsidered in light of the ICWW depth to ensure effective flushing.

For the Oyster Bay proposal, while the boardwalk meets applicable requirements, the overall project still poses some concern. At approximately 2/3 mile long and 10' wide, this is an extensive boardwalk beyond the typical pedestrian access way, and would facilitate considerable boating activity in Oyster Bay. The impacts of construction (including excavation of 675,000 cubic yards of material), boating activity associated with 396 slips, maintenance dredging (marina & channel of 4,600 feet), and related could result in considerable cumulative impacts. EPA remains concerned about the potential water quality degradation from these activities, particularly in a sheltered bay fringed by wetlands that likely provides valuable habitat.

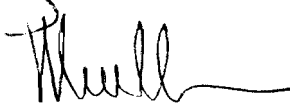
In addition, Oyster Bay and Bon Secour are both on Alabama's 303(d) list with impairments due to pathogens. The potential activity from the hundreds of additional proposed boat slips likely with further contribute to this impairment, particularly in Oyster Bay. Furthermore, given that similar marina-construction within Oyster Bay may follow should this project be approved, the cumulative effects have an even greater likelihood of exacerbating the existing impairment.

Three of the proposed projects involve direct impacts of wetlands acreage. Given that development of residential areas and marinas do not require siting in special aquatic sites (per 40 CFR Subpart E), none of these impacts are inherently water-dependent activities (40 CFR Part 230.10(a)). EPA notes that many of the projected impacts have been reduced. For example, 501 Point West, the original 2.15 acres of wetland impacts have been reduced to 0.79 acres; for Summerdance East, the impacts have been reduced from 10.8 to 0.28 acres. However, the 0.97 acres of impacts for Walker Creek/Portage Crossing have not been minimized. In addition, it also does not include any compensatory mitigation and is therefore an incomplete application. Based on EPA's discussions with the USACE, it is our understanding that this project will not be permitted as currently proposed. This commitment should be incorporated in the ROD. Additional wetland comments will be provided separately in response to Public Notice SAM-2004-3402-MBM, in accordance with procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of the Army regarding Section 404(q) of the Clean Water Act.

Overall, EPA appreciates the efforts made by the USACE to ensure that our agency concerns are addressed. Further efforts to avoid and minimize impacts to water quality should be committed to in the ROD. Ongoing monitoring of water quality indicators (e.g. DO) should be included as part of the required monitoring plan. In addition, EPA requests a copy of the ROD for this project for our records.

Thank you for the opportunity to comment on the FEIS. If we can be of further assistance, please do not hesitate to contact Ntale Kajumba of the NEPA Program at (404) 562-9620 or kajumba.ntale@epa.gov or Rosemary Hall of the Wetlands Sections at (404)562-9846 or hall.rosemary@epa.gov.

Sincerely,



Heinz J. Mueller, Chief
NEPA Program Office
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